SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 519.

ABRAM P. THOMPSON, PLAINTIFF IN ERROR,

vs.

JOSEPH J. DARDEN.

MOTION TO ADVANCE.

Statement.

This case was a suit for pilotage fees claimed by virtue of a tender of pilotage to the "William Neely," in command of Abram P. Thompson, and refused by him. It was brought in the court of law and chancery of the city of Norfolk, Virginia. The vessel was a coastwise vessel not holding a pilot's license. The plaintiff in error, by demurrer, raised the question that the Virginia pilot law was unconstitutional as respects coasting vessels.

The declaration in the case will be found on page 13 of the record, and the demurrer raising the question of constitutionality on page 14 of the record.

The case was argued in the court of law and chancery (the court of original jurisdiction) and was decided on February

12, 1903. This court sustained the demurrer, held the law to be unconstitutional, and, as no amendment could help the declaration, under these circumstances entered judgment for Abram P. Thompson, the vessel-owner. From that judgment Joseph J. Darden, the pilot, appealed to the court of appeals of Virginia. This court, on the 18th day of June, 1903, reversed the decision of the court of law and chancery, and remanded the case, with instructions to overrule the demurrer. Its mandate and opinion will be found on pages 18 *et seq.* of the record.

As this was not such a final judgment as could be appealed from, Abram P. Thompson, the vessel-owner, had to stand a trial in the court of law and chancery, and, under this decision of the court of appeals of Virginia, that trial, of course, resulted in a judgment for the pilot.

Thereupon Abram P. Thompson applied to the court of appeals of Virginia for a writ of error and supersedeas to the judgment of the court of law and chancery, but the court of appeals, in open court, refused the writ of error and supersedeas on the ground that the judgment was plainly right. This judgment of the court of appeals will be found on pages 28 and 29 of the printed record. Thereupon the case was brought by writ of error to this court.

FIRST GROUND.

This case is a test case on which sixty-six other similar cases are dependent.

This case is a test case, and was so intended by a large number of owners of coastwise vessels. When the court of law and chancery first held the Virginia pilot law unconstitutional, on February 12, 1903, these coastwise vessels refused to pay their pilotage fees, and matters continued in this situation until June 18, 1903, while the case was pend-

ing in the court of appeals of Virginia. After the decision of that court sustaining the pilot law and reversing the lower court, the pilots immediately proceeded to bring suits for all of the pilot fees which had accumulated during the interval. These suits now number as follows:

Circuit court of Norfolk county	28
Court of law and chancery of Norfolk city	1
Circuit court of Warwick county	9
Corporation court of Newport News	28
Total	66

The pilots, flushed with their victory in the court of appeals of Virginia, are pressing all of these suits and insisting upon a trial, and these suits are subject to call in the different courts where they are pending at various times during the next few months. If the lower courts set the cases for trial, of course the result in the State court with the existing State-court decision is a foregone conclusion. Under these circumstances the vessel-owners will be placed in the alternative of either paying up judgments for which they do not think they are liable, or taking a separate appeal in each one of these cases. As these separate appeals must go through the form of being presented to the court of appeals of Virginia and appealing from its order refusing the writ of error, and bonds must be given in each of the several courts, this means that it would cost probably two hundred and fifty dollars in each case to mature them for this court. The largest amount involved in any one of them is under two hundred dollars. Hence the first ground assigned for the motion to advance is that this is a test case and on it depends this large number of other cases.

SECOND GROUND.

This case involves the constitutionality of the Virginia pilot law, and it is important to both parties that their rights be settled as early as possible.

The Virginia pilot law will be found in sections 1955 to 1990 of the Virginia Code of 1887. There are hundreds of vessels that come into the Virginia capes yearly, specially at this season when the coal-shipping business from Lambert's point and Newport News is active. In the present unsettled state of the law, with contradictory decisions in the two courts as to its constitutionality, there must be necessarily great embarrassment on both sides as to their relative rights. The law, if valid, is based upon the theory of its being a police regulation. The entire commerce of the State is interested in its prompt settlement one way or the other, now that the question has been raised.

THIRD GROUND.

Unless the case is advanced, the vessel-owners will be at a loss whether or not to renew their annual licenses.

In consequence of the fact that no fees were paid during the interregnum between the decisions of the lower court against the constitutionality of the act, on February 12, 1903, and the decision of the court of appeals in favor of its constitutionality, on June 18, 1903, the accumulated licenses of months were renewed during the months of July, August, and September, as these vessels came in.

Under the Virginia pilot law trip pilotage is regulated by the draft of the vessel, but under section 1967 of the Code, which is part of this law, vessels have the option of taking out an annual license at the price of ten cents per registered ton. This, though a very large sum when assessed upon the immense schooners that are now being built, is much cheaper than to pay trip pilotage in case the vessel makes frequent voyages. Consequently, while the parties interested in this contest refused to pay the trip pilotage already incurred during the above interregnum, they took out licenses in July, August, and September, 1903, to prevent the accumulation of too large a risk, thinking that this case would probably be finally settled by the time their licenses ran out. Unless it can be advanced, they will be under the necessity during the coming summer of again renewing their licenses for another year, thereby putting themselves in the position of again submitting to a law which they consider inequitable; for where two learned courts have differed no one can pretend to give any absolutely certain opinion as to the final result, and the accumulation of trip pilotages will make too heavy an ultimate liability in the event of a final decision in favor of the constitutionality of the law.

CONCLUSION.

Wherefore Abram P. Thompson, the plaintiff in error, moves this court to advance the hearing of this cause.

Respectfully submitted.

ROB'T M. HUGHES,
Counsel for Abram P. Thompson,
Plaintiff in Error.

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NOTICE OF MOTION.

To JOSEPH J. DARDEN, *Pilot:*

Take notice that on Monday, March 21, 1904, between the hours of twelve and four, I will move to advance the hearing of the above-entitled cause.

ABRAM P. THOMPSON,
Per ROB'T M. HUGHES,
His Counsel.

MARCH 14, 1904.

Service of this notice and the motion hereto attached accepted.

R. C. MARSHALL,
D. TUCKER BROOKE,
Attorneys for Defendant in Error.